

**United States Department of Labor  
Employees' Compensation Appeals Board**

C.D., Appellant	)	
	)	
and	)	<b>Docket No. 19-0611</b>
	)	<b>Issued: August 9, 2019</b>
U.S. POSTAL SERVICE, POST OFFICE,	)	
Freehold, NJ, Employer	)	
	)	

*Appearances:*  
Michael D. Overman, Esq., for the appellant<sup>1</sup>  
Office of Solicitor, for the Director

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:  
PATRICIA H. FITZGERALD, Deputy Chief Judge  
JANICE B. ASKIN, Judge  
ALEC J. KOROMILAS, Alternate Judge

**JURISDICTION**

On January 25, 2019 appellant, through counsel, filed a timely appeal from an August 29, 2018 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act<sup>2</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

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<sup>1</sup> In all cases in which a representative has been authorized in a matter before the Board, no claim for a fee for legal or other service performed on appeal before the Board is valid unless approved by the Board. 20 C.F.R. § 501.9(e). No contract for a stipulated fee or on a contingent fee basis will be approved by the Board. *Id.* An attorney or representative's collection of a fee without the Board's approval may constitute a misdemeanor, subject to fine or imprisonment for up to one year or both. *Id.*; see also 18 U.S.C. § 292. Demands for payment of fees to a representative, prior to approval by the Board, may be reported to appropriate authorities for investigation.

<sup>2</sup> 5 U.S.C. § 8101 *et seq.*

## ISSUE

The issue is whether appellant has met her burden of proof to establish additional left shoulder, cervical, and/or lumbar conditions causally related to the accepted February 23, 2015 employment injury.

## FACTUAL HISTORY

This case has previously been before the Board.<sup>3</sup> The facts and circumstances as set forth in the Board's prior decision are incorporated herein by reference. The relevant facts are as follows.

On February 23, 2015 appellant, then a 63-year-old letter carrier, slipped on ice and fell in the employing establishment parking lot just prior to her scheduled workday. On her Form CA-1 she claimed to have injured her back, right elbow, and her head due to the work-related fall. In July 2015, OWCP accepted appellant's traumatic injury claim for lumbar sprain, right elbow contusion, back contusion, and neck sprain. However, it repeatedly declined to expand her claim to include bilateral rotator cuff syndrome, bilateral shoulder impingement, right shoulder rotator cuff tear and tendinopathy, and cervical and lumbar herniated nucleus pulposus (HNP).

By decision dated April 10, 2017, a hearing representative affirmed the denial of claim for left rotator cuff syndrome, left shoulder impingement, HNP bulge cervical and lumbar intervertebral discs, but vacated the prior decision with regard to the claimed right shoulder injury. On July 6, 2017 OWCP expanded acceptance of the claim to include contusion of the right shoulder.<sup>4</sup>

Appellant appealed to the Board. By decision dated May 4, 2018, the Board affirmed OWCP's April 10, 2017 decision, finding that appellant had not established that her left rotator cuff syndrome, left shoulder impingement, and cervical and lumbar HNP were causally related to the accepted February 23, 2015 employment injury.<sup>5</sup>

Following the Board's May 4, 2018 decision, counsel requested reconsideration and submitted additional medical evidence.

In a May 24, 2018 report, Dr. Nasser Ani, a Board-certified orthopedic surgeon opined that appellant's right shoulder injury was "directly and causally related to the injury she sustained on [February 23, 2015]." He explained that, when appellant slipped and fell on ice, she extended her right arm out to catch her fall. Dr. Ani related that the most common cause of an acute rotator cuff

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<sup>3</sup> Docket No. 17-1357 (issued May 4, 2018).

<sup>4</sup> By decision dated July 11, 2017, OWCP denied the claim for right rotator cuff syndrome, right shoulder impingement, right shoulder rotator cuff tear, and tenopathy. Appellant, through counsel, requested a hearing with regard to the July 11, 2017 denial decision, however the record reflects that the issue of appellant's additional right shoulder conditions remains pending before OWCP's Branch of Hearings and Review and is not presently before the Board.

<sup>5</sup> *Supra* note 3.

tear was a high impact injury or jerking motion and that rotator cuff muscles could be damaged or torn due to a force of suddenly pushing a heavy object. He reported: “this mechanism of injury is synonymous with the description the patient provided us.” Dr. Ani indicated that, in order to prevent further injury, appellant extended her right arm to catch herself and absorb the impact. He also noted that appellant’s clinical examination and MRI scan findings clearly demonstrated a right shoulder rotator cuff tear directly related to her fall.

By decision dated August 29, 2018, OWCP denied modification.

### **LEGAL PRECEDENT**

Where an employee claims that a condition not accepted or approved by OWCP was due to an employment injury, he or she bears the burden of proof to establish that the condition is causally related to the employment injury.<sup>6</sup>

Causal relationship is a medical question that requires rationalized medical opinion evidence to resolve the issue.<sup>7</sup> A physician’s opinion on whether there is a causal relationship between the diagnosed condition and the implicated employment factor(s) must be based on a complete factual and medical background.<sup>8</sup> Additionally, the physician’s opinion must be expressed in terms of a reasonable degree of medical certainty, and must be supported by medical rationale, explaining the nature of the relationship between the diagnosed condition and appellant’s specific employment factor(s).<sup>9</sup>

### **ANALYSIS**

The Board finds that appellant has not met her burden of proof to establish additional left shoulder, cervical, and/or lumbar conditions causally related to her accepted February 13, 2015 employment injury.

Preliminarily, the Board notes that it is unnecessary to reconsider the evidence appellant submitted prior to the issuance of OWCP’s April 10, 2017 decision because the Board already considered this evidence in its May 4, 2018 decision. Findings made in prior Board decisions are *res judicata* absent any further review by OWCP under section 8128 of FECA.<sup>10</sup>

On reconsideration counsel submitted a May 24, 2018 report from Dr. Ani who opined that appellant’s right shoulder injury was “directly and causally related to the injury she sustained on [February 23, 2015].” He explained that when appellant slipped and fell on ice, she extended her

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<sup>6</sup> *R.J.*, Docket No. 17-1365 (issued May 8, 2019); *Jaja K. Asaramo*, 55 ECAB 200, 204 (2004).

<sup>7</sup> *E.M.*, Docket No. 18-1599 (issued March 7, 2019); *Robert G. Morris*, 48 ECAB 238 (1996).

<sup>8</sup> *M.V.*, Docket No. 18-0884 (issued December 28, 2018); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

<sup>9</sup> *Id.*

<sup>10</sup> *See E.B.*, Docket No. 17-1497 (issued March 19, 2019); *K.K.*, Docket No. 17-1061 (issued July 25, 2018). The Board will, therefore, not review the evidence addressed in the prior appeal.

right arm forward in order to catch her fall. Dr. Ani reported: “this mechanism of injury is synonymous with the description the patient provided us.” Although Dr. Ani provided an opinion relative to causal relationship related to appellant’s right upper extremity, he did not offer an opinion on whether appellant’s left shoulder rotator cuff and impingement syndrome or her cervical and lumbar HNP were causally related to the accepted February 23, 2015 employment injury. As noted, the issue of expansion of the claim regarding appellant’s right upper extremity condition is currently pending before the Branch of Hearing’s and Review.<sup>11</sup> The medical evidence received since OWCP’s April 10, 2017 decision does not address appellant’s left shoulder and cervical/lumbar conditions, and therefore, it is insufficient to establish expansion of appellant’s claim to include additional left shoulder, cervical, and/or lumbar conditions. Accordingly, the Board finds that appellant has not met her burden of proof to establish causal relationship between her left shoulder conditions and/or cervical/lumbar HNP and the accepted February 23, 2015 employment injury.<sup>12</sup>

On appeal counsel argues that there is an unresolved conflict in medical opinion regarding whether appellant’s claimed right upper extremity conditions are employment related. As discussed above, the issue of whether the record supports expansion of the claim with respect to additional right upper extremity conditions is not currently before the Board.

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

### **CONCLUSION**

The Board finds that appellant has not met her burden of proof to establish additional left shoulder, cervical, and/or lumbar conditions causally related to the accepted February 23, 2015 employment injury.

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<sup>11</sup> *Supra* note 7. The Board and OWCP may not simultaneously exercise jurisdiction over the same issue(s). 20 C.F.R. §§ 501.2(c)(3), 10.626; *see, e.g., Lawrence Sherman*, 55 ECAB 359, 360 n.4 (2004).

<sup>12</sup> *See T.F.*, Docket No. 17-0645 (issued August 15, 2018); *see also G.M.*, Docket No. 16-1764 (issued March 16, 2018).

**ORDER**

**IT IS HEREBY ORDERED THAT** the August 29, 2018 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 9, 2019  
Washington, DC

Patricia H. Fitzgerald, Deputy Chief Judge  
Employees' Compensation Appeals Board

Janice B. Askin, Judge  
Employees' Compensation Appeals Board

Alec J. Koromilas, Alternate Judge  
Employees' Compensation Appeals Board